

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINFRED WAIRIMU WAMAI, et al.,

Plaintiffs,

-v.-

INDUSTRIAL BANK OF KOREA,

Defendant.

Case No. 21-cv-325-DLC

STIPULATION AND ORDER

This stipulation is made by and between Plaintiffs Winfred Wairimu Wamai, et al. (“Plaintiffs”), and Defendant Industrial Bank of Korea (“IBK”) (collectively, “the Parties”).

WHEREAS, Plaintiffs filed this action on January 14, 2021 (ECF No. 1);

WHEREAS, IBK moved to dismiss the Complaint on the grounds of *forum non conveniens* on April 13, 2021 (ECF No. 18), and the motion became fully submitted on June 3, 2021 (ECF No. 21);

WHEREAS, on July 14, 2021, the Court granted IBK’s motion and conditionally dismissed this action on the grounds of *forum non conveniens* (ECF No. 36) (“Opinion & Order”);

WHEREAS, in opposing IBK’s motion to dismiss, Plaintiffs contended (and continue to contend) that Korea is not an adequate alternative forum and reserve all rights with respect to the Court’s ruling and any subsequent judgment, including their rights to appeal;

WHEREAS, IBK contended (and continues to contend) that Korea is an adequate alternative forum, and the Court found that the action may be litigated in Korea;

WHEREAS, the Court “condition[ed] dismissal of this action on a stipulation to accept service in Korea” (Opinion & Order at 16);

WHEREAS, the Court recognized that IBK “has represented to the Court that it will waive all statute of limitations defenses it could assert in Korea, and the Court [would] condition dismissal on such a waiver” (Opinion & Order at 19);

WHEREAS, the Court ordered that “[t]he parties shall submit an agreement to litigate in Korea, which shall include a commitment by IBK to accept service in Korea and waive any jurisdictional or statute of limitations defense” (Opinion & Order at 23);

WHEREAS, the Court ordered that “[t]he parties shall file an agreement to litigate in Korea, containing the aforementioned terms, by July 28, 2021” (Opinion & Order at 23);


NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED by the Parties that:

1. IBK agrees to accept service in Korea in connection with Plaintiffs’ action;
2. IBK submits to the jurisdiction of Seoul Central District Court, or any other proper Korean court for purposes of the Plaintiffs’ action;
3. IBK agrees not to make any filing or statement in any Korean judicial proceeding in which it argues that the Korean judiciary should not recognize Plaintiffs’ judgments against the Islamic Republic of Iran (“Iran”) as valid and enforceable in Korean courts;
4. IBK agrees not to make any filing or statement in any Korean judicial proceeding in which it argues that Plaintiffs’ exercise of creditor’s right of revocation, damage claim arising from tort, or creditor’s subrogation right against IBK under Korean law is dependent upon a finding by Korean courts that Plaintiffs’ judgments against Iran are valid and enforceable in Korea;

5. While IBK reserves the right to assert statute of limitations defenses in courts outside of Korea, IBK will not raise objections in any Korean court for the purposes of the Plaintiffs' action based on any statute of limitations so long as Plaintiffs file a complaint within the later of (a) six months from the issuance of the mandate in any appeal initiated by Plaintiffs in this action or (b) nine months from the date the Court enters its judgment;
6. This stipulation is entered into without prejudice to or waiver of Plaintiffs' rights to appeal.

So ordered.

Dated: July 29, 2021



DENISE COTE
United States District Judge

Dated: July 28, 2021
New York, New York

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